

PRISCILLA ANNE WHITEHEAD
ATTORNEY-AT-LAW

SWIDLER
&
BERLIN
CHARTERED

DIRECT DIAL
(202)424-7870

August 20, 1997

VIA HAND DELIVERY

EX PARTE OR LATE FILED

William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20054

RECEIVED
AUG 20 1997
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**Re: Notice of Ex Parte Presentation Concerning Proposed Merger of British
Telecommunications plc and MCI Communications Corporation
(GN Docket No. 96-245)**

Dear Mr. Caton:

Pursuant to Section 1.1206(a) of the Commission's Rules, 47 C.F.R. § 1.1206 (1997), Cognito Limited ("Cognito"), by its undersigned counsel, hereby provides two copies of *Talking Points Submitted to the Commission by Cognito Limited* and two copies of a letter from the Office of Telecommunications ("OFTEL") to Chris Hoyle regarding Cognito's Request for Determination on the Applicability of Condition 13 Pricing to Private Circuits, and for an Order Under Section 16 for BT to Comply with Condition 13 and its Fair Trading Obligations. These documents were delivered during a meeting held yesterday among Helen E. Disenhaus and Priscilla A. Whitehead, outside counsel for Cognito, and Kerry Murray of the Commission's staff. Please associate this filing with GN Docket No. 96-245.

During the meeting, in addition to the items discussed in the attached written *ex parte*, we discussed potential remedies for resolving Cognito's concerns.

Please date-stamp the enclosed extra copy of this filing and return it via our messenger. Should you have any questions, please do not hesitate to contact the undersigned.

Sincerely,



Priscilla A. Whitehead

Enclosure

cc: Kerry E. Murray, Esq.

No. of Copies rec'd 021
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CERTIFICATE OF SERVICE


I, Patricia A. Sager, hereby certify this 20th day of August, 1997, that a copy of the foregoing Ex Parte Submission Concerning Proposed Merger of British Telecommunications plc and MCI Communications Corporation (GN Docket No. 96-245) was served, via hand delivery, upon the following parties:

Kerry E. Murray, Esq.
Federal Communications Commission
2000 M Street, N.W., Room 838
Washington, D.C. 20554

Troy Tanner, Esq.
Federal Communications Commission
2000 M Street, N.W., Room 840
Washington, D.C. 20554

Ms. Suzanne Settle
Senior Policy Advisor
NTIA/Department of Commerce
14th Street and Constitution Avenue, N.W.
Room 4701
Washington, D.C. 20230

International Transcription Service
1231 20th Street, N.W.
Washington, D.C. 20036


Patricia A. Sager

**TALKING POINTS
SUBMITTED TO THE COMMISSION
BY COGNITO LIMITED**

On July 18, 1997, Cognito Limited ("Cognito") filed with the FCC an *Ex Parte Submission Concerning Proposed Merger of British Telecommunications plc ("BT") and MCI Communications Corporation ("MCI")* (GN Docket No. 96-245), which attached copies of a formal *Supplemental Request* submitted on Cognito's behalf to the United Kingdom regulator, Oftel. Cognito is a U.K. provider of terminals and mobile data services that utilizes private circuits leased from BT to send messages between its base stations and switching sites, and thus it requires numerous circuits below 2 MB. Since 1992, BT has refused to provide Cognito with national private circuits at wholesale rates. BT now refuses to meet or further discuss this issue with Cognito.

This matter is relevant to the Commission's deliberations with respect to the referenced docket since it evidences a concern with the enforcement of procompetitive policies in the U.K. and BT's commitment to the reforms. Cognito highlights its concerns below.

- Cognito is concerned that BT has not complied with its license obligations with respect to services to be provided the competitors.
- Specifically, BT has refused for an extended period of time (five years) to provide Cognito inland private circuits on a wholesale basis, which Cognito understands that BT has an obligation to provide under Condition 13 of BT's licence. Although it appears that BT should be providing wholesale prices for national private circuits, BT has used its dominant market position to avoid doing so.
- Cognito is concerned that Oftel has not been forthcoming with adequate assistance in enforcing BT's interconnection obligations, which provide for the wholesale pricing.
- Oftel has indicated in discussions with Cognito that even assuming it makes a formal determination in the proceeding that Cognito was entitled to wholesale prices, Oftel will not be prepared to require that BT make the wholesale pricing retroactive to 1992 to make whole Cognito for its years of overpayments.
- Significantly, Oftel has now concluded that as of October 1997, BT should no longer be obliged to provide national circuits at wholesale pricing because Oftel considers that the UK market for provision of such private circuits is suitably competitive. However, Cognito will in fact be required to purchase such lines from BT since, to Cognito's knowledge, there are no other providers of inland private circuits within the UK providing bandwidth of less than 2 MB.
- We attach a copy of Oftel's response to Cognito's *Supplementary Request*. Although Cognito first contacted Oftel about this issue in 1992, and has engaged in correspondence with Oftel concerning the issue, Oftel's initial response to the comprehensive *Supplementary Request* simply is to request additional information from Cognito.

Attachment

Your reference

Our reference

Date 31 July 1997

4 AUG 1997



Chris Hoyle
Rakisons Solicitors
27 Chancery Lane
London
WC2A 1NF

50 Ludgate Hill
London EC4M 7JJ
Fax: 0171 634 8943
Switchboard: 0171 634 8700
Direct Line: 0171 634 8844

Dear Mr Hoyle

**COGNITO LTD: REQUEST FOR DETERMINATION ON THE APPLICABILITY OF
CONDITION 13 PRICING TO PRIVATE CIRCUITS, AND FOR AN ORDER UNDER
SECTION 16 FOR BT TO COMPLY WITH CONDITION 13 AND ITS FAIR
TRADING OBLIGATIONS**

Thank you for your letter dated 6 June 1997 on behalf of Cognito Ltd., requesting a determination that Condition 13 of BT's Licence applies to the provision of domestic leased lines to Cognito Ltd. You also asked for OFTEL to consider action under Condition 16 of BT's licence.

In order to progress this request could you please supply OFTEL with the following:

- Precise details of where and how the leased lines covered by the requests are used in Cognito's network; please state why Cognito considers these services are required to enable it to provide connection services under Condition 13.1(c). For example, it appears that at least some of the circuits involved are for Cognito's infrastructure. Your analysis should explain why Condition 13 applies to these circuits;
- Details of the exact specifications, including line speed capacity, for all leased lines relevant to this request;
- Copies of any relevant interconnect agreements between Cognito and BT, whether explicitly under Condition 13 or not;
- In respect of Cognito's position on issues under BT's Fair Trading Conditions: a more detailed explanation of why the arrangements for PSTN dial-up, presumably negotiated as

part of Cognito's contract with BT (and in a sense part of the 'price'), should be considered as unfair trading.

- A more detailed explanation of why Cognito is or may be disadvantaged, vis a vis its competitors, by BT's failure to provide the relevant services under Condition 13. Do Cognito's competitors obtain such terms? Or is Cognito suggesting prices for the circuits are too high? If so, on what basis?

The information above will enable us to consider the request in more detail.

In addition, I would like to draw to your attention that as part of OFTEL's Network Charge Control we have proposed modifications to BT's licence to remove private circuits services from the ambit of Condition 13.

Yours sincerely

Vine Affs

pp David Mulholland